

REMARKS

Applicants respectfully request reconsideration in view of the amendments set forth above and the remarks below. Claims 1, 2, 4, 6, 7, 10-12, and 20-35 were pending. With the present Response, Applicants amend Claims 1, 4, 6, 21, 25, and 32; therefore, Claims 1, 2, 4, 6, 7, 10-12, and 20-35 remain pending. Support for the claim amendments can be found throughout the application as originally filed, including at least Figures 21-24 and their associated descriptions, including page 8, line 24 through page 9, line 10. Although Applicants respectfully disagree with the rejections and do not acquiesce, Applicants have amended the claims in order to expedite prosecution. Applicants reserve the right to pursue previous versions of all claims in one or more future patent applications.

Claims 1, 3, 4, 6, 7, 10-12 and 20-35 Comply with the Requirements of 35 U.S.C. § 112

Claims 21-23 stand rejected under 35 U.S.C. § 112, first paragraph as failing to comply with the written description requirement. The Office Action states that the claims contain subject matter “which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.” Office Action, page 2. In particular, the Office Action states, “‘the outer sealing member including a sealing flange’ in claim 21 line 3 is not sufficiently supported in applicant’s original disclosure.” Office Action, page 2. The Office Action further states there is no disclosure of a sealing flange that “has a reduced cross-sectional thickness compared with said peripheral wall” as recited in Claim 22, nor any disclosure of a sealing flange that is “shaped to follow the contours of said peripheral ridge” as recited in Claim 23.

Although Applicants respectfully disagree, to expedite prosecution, Claim 21 has been amended such that the language “the outer sealing member including a sealing flange” is no longer recited. However, Claim 1 has been amended to recite the feature of an outer sealing member including a sealing flange, and thus, Applicants address the rejection with respect to Claim 1.

Applicants submit that the feature of an outer sealing member including a sealing flange as recited in amended Claim 1 is fully supported by the original application. For example, at page 9, lines 22-23, Applicants explain that an outer sealing member is sometimes referred to as

a mask cushion 301 ("The full face mask 300 includes a hollow body 302 and outer sealing member or mask cushion 301."). In addition, at page 10, lines 19-24, Applicants explain that a mask cushion 301 can include a flange that seals against the patient's face ("Note must be made that the inner flange 307 of the cushion 301 that rests against the patient's face is also thinner in section than the side walls of the cushion 301 In use, the inner flange 307 is the area of the cushion that seals against the patient's face") (emphasis added).

Therefore, because the application as originally filed explains that an outer sealing member is sometimes referred to as a mask cushion, and that a mask cushion can include a flange that seals against a patient's face, the application as originally filed fully supports the amended language of Claim 1 ("the outer sealing member including a sealing flange"). An outer sealing member (e.g., mask cushion 301) including a sealing flange (e.g., flange 307) is also shown in several of the originally-filed figures, for example, in Figures 28, 29, and 32, below (as well as several other figures).

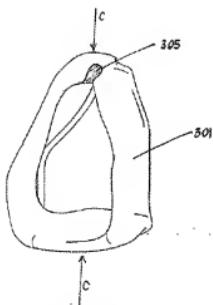


FIGURE 28

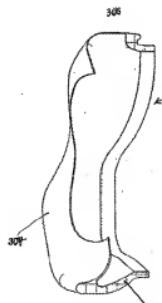


FIGURE 29

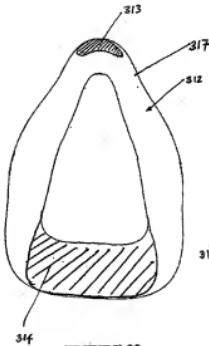


FIGURE 32

A sealing flange having "a reduced cross-sectional thickness compared with said peripheral wall," as recited in Claim 22, is fully supported by the specification, as well. For example, page 10, lines 19-21, provide, "the inner flange 307 of the cushion 301 that rests against the patient's face is also thinner in section than the side walls of the cushion 301" (emphasis added). In addition, a sealing flange "shaped to follow the contours of said peripheral

ridge,” as recited in Claim 23, also finds support from the originally-filed specification. For example, Figure 29 illustrates a flange 307 following the contour of a peripheral ridge that is a contacting portion of an outer sealing member or mask cushion 301.

Furthermore, because the application as filed describes an outer sealing member that includes a sealing flange, all other issues raised in the Office Action, including those related to Claims 7, 10, and 24 as mentioned on page 3 of the Office Action, are moot. Therefore, Applicants respectfully request withdrawal of the 35 U.S.C. § 112, first paragraph rejections.

Claims 1-23 stand rejected under 35 U.S.C. § 112, second paragraph as indefinite for failing to particularly point out and distinctly claim the subject matter regarded as the invention. The amendments to Claims 1 and 6 address these issues; therefore, Applicants respectfully request withdrawal of the 35 U.S.C. § 112, second paragraph rejections, as well.

Palkin Fails To Anticipate Claims 1, 2, 6, 7, 10-12 and 20-35 Under 35 U.S.C. § 102

Claims 1, 2, 6, 7, 10-12 and 20-35 stand rejected under 35 U.S.C. § 102(b) as anticipated by U.S. Publication No. 2003/0019495 to Palkon, et al. In particular, the Office Action states that Palkon’s “figs. 1, 3 and 6 [show] a breathing assistance apparatus (10), comprising: a mask body (16) . . . and a sealing interface; including at least an outer sealing member (membranes 46, 47, and 48 . . . [or alternatively] only membrane 46 . . .), . . . the outer sealing member includes a peripheral wall (45) . . . , the peripheral wall (45) including, a bridge region (45b) . . . having a thinner cross-section than the rest of said peripheral wall (fig. 6 and [0029] lines 19-44)” Office Action, page 4.

Applicants respectfully disagree and do not acquiesce to the rejection; however, Applicants have amended Claims 1, 25 and 32 in order to expedite prosecution. Indeed, Claims 1, 25 and 32 (as well as their respective dependent claims) distinguish over the applied art because the applied art fails to teach or suggest all of the claims’ language.

Claims 1, 2, 6, 7, 10-12, 20-24

Claim 1 describes, among other things (emphasis added):

1. A breathing assistance apparatus comprising:
a mask body . . . , and
a sealing interface including at least an outer sealing member . . . ,

said outer sealing member including a peripheral wall . . . , said peripheral wall including a bridge region that extends over a patient's nasal bridge in use,

said bridge region . . . having a thin section comprising a material cross-section that is thinner than adjacent regions of said outer sealing member, said thin section of said nasal bridge region being surrounded by thicker sections of said outer sealing member.

Applicants describe the benefits of these features, throughout the application as originally filed. For example, Applicants explain that such a bridge section can increase user comfort while reducing the likelihood of tearing. Application, page 9, lines 7-10.

In contrast to the language above, Palkon fails to teach or suggest at least an outer sealing member including a thin section of a nasal bridge region that is "surrounded by thicker sections of said outer sealing member." Nothing in Palkon teaches or suggests such language.

For example, as shown in FIG. 6 (below), none of Palkon's membranes 46, 47 and 48 has a thin section that is surrounded by thicker sections. Indeed, Palkon merely explains:

The membranes 46b, 47, and 48b at the nasal bridge region 38 of the cushion 30 are all about the same thickness and all, preferably are as thin as the membrane 48a at the lip region 39 of the cushion 30. At the lip region 39 the membranes have different thicknesses The change in thickness of the membrane between the lip region 39 and the nasal bridge region 38 occurs in the cheek region 40.

None of Palkon's membranes are surrounded by thicker sections of an outer sealing member. Therefore, because Palkon does not disclose all the features of amended Claim 1, Claim 1 distinguishes over the applied art.

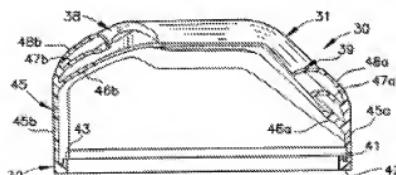


FIG. 6

Palkon Fig. 6

Claims 2, 6, 7, 10-12, and 20-24 depend from Claim 1. Therefore, Claims 2, 6, 7, 10-12, and 20-24 distinguish over the applied art for at least the same reasons discussed above. Claims

Application No.: 10/599,394
Filing Date: March 27, 2007

2, 6, 7, 10-12, and 20-24 also distinguish over the applied art due to the unique combinations of features recited in those claims.

Claims 25-31

Claim 25 describes, among other things (emphasis added):

25. A user interface comprising:
a mask body, and
a resilient sealing member . . . ,
the sealing member further comprising a peripheral wall that extends from the mask body, the wall including a bridge region that is positioned adjacent a user's nasal bridge in use, wherein a thin portion of the bridge region has a smaller cross-sectional thickness than adjacent regions of the sealing member, and wherein the thin portion of the bridge region is intermediate the mask end and the user end of the sealing member such that the sealing member's cross-sectional thickness is greater at the mask end and user end than at the thin bridge region.

This feature also advantageously provides increased user comfort and reduces the likelihood of tearing, such as at the user end.

Palkon fails to teach or suggest at least a resilient sealing member having a thin portion of a bridge region, "wherein the thin portion of the bridge region is intermediate the mask end and the user end of the sealing member such that the sealing member's cross-sectional thickness is greater at the mask end and user end than at the thin bridge region". For example, as shown in Palkon's FIG. 6 (above), the no portion of any of the membranes 46, 47 and 48 has a reduced thickness at the nasal bridge region 38 that is intermediate a mask end and a user end such that the sealing member's cross-sectional thickness is greater at a mask end and a user end than at a thin bridge region.

Therefore, because Palkon does not disclose all the features of amended Claim 25, Claim 25 distinguishes over the applied art. In addition, Claims 26-31 depend from amended Claim 25; therefore, Claims 26-31 distinguish over the applied art for at least the same reasons discussed above with respect to Claim 25. Claims 26-31 also distinguish over the applied art due to the unique combinations of features recited in those claims.

Claims 32-35

Claim 32 describes, among other things (emphasis added):

32. A sealing member for a user interface comprising:
a peripheral wall . . . , and
a sealing flange arranged about the user end of the peripheral wall
and projecting inwardly of the closed loop and terminating in a suspended
end . . .,
wherein the peripheral wall includes a bridge region . . . , the
bridge region having a thin section with a reduced cross-sectional
thickness compared with adjacent sections of the sealing member at the
user end, the thin section of the bridge region being disposed intermediate
the mask end of the peripheral wall and the user end.

These features also advantageously provides increased user comfort and reduces the likelihood of tearing, such as at the user end.

Palkon fails to teach or suggest at least a sealing member having a bridge retion, the bridge region having a thin section section with a “reduced cross-sectional thickness compared with adjacent sections of the sealing member at a user end resting adjacent a user’s face, the thin section of the bridge region being disposed intermediate the mask end of the peripheral wall and the user end.” For example, as shown in Palkon’s FIG. 6 (above), Palkon does not teach or suggest a membranes 46, 47 and 48 that has a reduced thickness at a nasal bridge region 38 and a reduced cross-sectional thickness compared with adjacent sections of the sealing member at a user end resting adjacent a user’s face.

Therefore, because Palkon does not disclose all the features of amended Claim 32, Claim 32 distinguishes over the applied art. In addition, Claims 33-35 depend from amended Claim 32; therefore, Claims 33-35 distinguish over the applied art for at least the same reasons discussed above with respect to Claim 32. Claims 33-35 also distinguish over the applied art due to the unique combinations of features recited in those claims.

Claim 4 Is Not Obvious Under 35 U.S.C. § 103

Claim 4 stands rejected under 35 U.S.C. § 103(a) as obvious in view of Palkon. In particular, the Office Action states that while Palkon does not specifically disclose an interface that is a full face mask, this modification would have been obvious to one skilled in the art and would be a design consideration. Office Action, page 9.

Application No.: 10/599,394
Filing Date: March 27, 2007

Applicants respectfully disagree; however, Applicants need not address the rejection further, as Claim 4 depends from Claim 1, which distinguishes over the applied art for at least the reasons discussed above. Therefore, Claim 4 distinguishes over the applied art for at least these reasons, as well. In addition, Claim 4 distinguishes over the applied art for the unique combination of features recited in that claim.

No Disclaimers or Disavowals

Although the present communication may include alterations to the application or claims, or characterizations of claim scope or referenced art, Applicants are not conceding in this application that previously pending claims are not patentable over the cited references. Rather, any alterations or characterizations are being made to facilitate expeditious prosecution of this application. Applicants reserve the right to pursue at a later date any previously pending or other broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution. Accordingly, reviewers of this or any parent, child or related prosecution history shall not reasonably infer that Applicants have made any disclaimers or disavowals of any subject matter supported by the present application.

CONCLUSION

In view of the foregoing amendments and remarks, Applicants submit that this application is in condition for allowance and such action is respectfully requested. If any issues remain or require further clarification, the Examiner is respectfully requested to call Applicants' counsel at the number indicated below in order to resolve such issues promptly.

Application No.: 10/599,394
Filing Date: March 27, 2007

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

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By:/Andrew I. Kimmel/

Andrew I. Kimmel
Registration No. 58,855
Attorney of Record
Customer No. 20,995
(949) 760-0404

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